

Bill 28: All Families Are Equal

November 29, 2017

Bill 28, the All Families Are Equal Act (AFAEA) reflects the Government of Ontario's desire to implement a broad progressive agenda throughout provincial legislation, recognizing that the underlying basis of the Canadian family unit has evolved over the past few decades.

AFAEA came into force on January 1, 2017. By amending existing statutes, especially the Children's Law Reform Act (CLRA) and the Succession Law Reform Act (SLRA), the AFAEA aims to transform key aspects of estate and health law, as summarized in the chart below:

All Families Are Equal Act	Effects on Other Legislation	Practical Effects
Section 71(1-5)	Amends the definitions of child, issue, parent and spouse found in section 1(1) of the SLRA to include children conceived posthumously via assisted reproduction, and to broaden the definition of parent to include arrangements other than that of one father and one mother.	Significantly alters who may bring an application for support as a dependent of a deceased's estate, who may share in the deceased's estate, and to whom lapsed gifts should be distributed.
Section 71 (6-10)	Outlines detailed conditions under which a posthumously born infant may be legally recognized as the child of the deceased.	Significantly alters who may bring an application for support as a dependent of a deceased's estate, who may share in the deceased's estate, and to whom lapsed gifts should be distributed.
Sections 4-6	Adds new sections to the CLRA, updating the conditions of parentage to create a presumptive exclusion of a person who provides reproductive material or an embryo, as well as a surrogate who waives	Changes the definition of parent throughout Ontario law, with a critical impact on issues such as: <ul style="list-style-type: none"> • Custody rights • Child support

	their entitlement to parenthood.	<ul style="list-style-type: none"> • Registration of births • Medical consent • Substitute decision-making • Parental tax benefits • Inheritance • Citizenship
Section 7	Adds a new section to the CLRA, introducing a number of conditions which presumptively render an individual the parent of a child, such as being the spouse of the child's parent at birth, and being in a conjugal relationship with the child's parent within 300 days before birth.	
Section 8	Adds a new section to the CLRA, codifying the existing presumption that one parent's spouse will be deemed to be the child's parent even if the child was conceived via assisted reproduction with a third individual.	
Section 9	Adds a new section to the CLRA, introducing the concept of a "pre-conception parentage agreement," which allows potential parents included within sections 6-8 of the AFAEA to contractually define their parentage status.	Provides a new option for individuals seeking to clarify the parental status of their child, with complex parentage situations involving artificial insemination, surrogacy and intimate relationships among more than two individuals.
Sections 10-11	Adds new sections to the CLRA, updating Ontario law to provide for surrogacy agreements, with a standard format for up to four legal parents, and an extraordinary format which can accommodate additional parents. These surrogacy agreements are not legally binding, but may serve as evidence of the parties' intentions.	Brings clarity to a previous convoluted aspect of Ontario law touching on the family, health and estates contexts.

By

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